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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/661,256   | 09/12/2003  | Stefan Keiser        | P/543-107           | 7780             |
| 2352   | 7590        | 10/21/2004           | EXAMINER            |                  |
| OSTROLENK FABER GERB & SOFFEN<br>1180 AVENUE OF THE AMERICAS<br>NEW YORK, NY 100368403 |             |                      | FORD, JOHN K        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3753                |                  |
| DATE MAILED: 10/21/2004  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/661,256

Applicant(s)

KEISER ET AL.

Examiner

John K. Ford

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/15/04
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 4-6, 10-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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In applicant's response of July 15, 2004, applicant's election of Group III, apparatus claims 1-17, without traverse, is acknowledged.

Applicant has further elected Figs 1 -2 in response to a requirement to elect one species. Applicant argues that because every embodiment has two or more layers, the election of species requirement "should be withdrawn", presumably because it is, in some unexplained way, in error. The Examiner does not understand this logic. As well, applicant erroneously states that none of the claims "specifically recites additional films." The Examiner strongly disagrees. Claim 4 recites, specifically, an additional film as does claim 10, in lines 10-12. Thus, only apparatus claims 1-3, and 7-9 are readable on the elected species because of the dependency of claims 5 and 6 from non-elected claim 4 and the dependency of claims 11-17 from non-elected claim 10. The election requirement has been reviewed in view of applicant's traversal and is deemed proper and made final. No admission was made by applicant that the species are obvious variants.

Pursuant to MPEP 821, claims 4-6, 10-17 and 18-29 are withdrawn here as being directed to non-elected species and inventions. As stated in the MPEP, this unilateral withdrawal of non-readable claims is the Examiner's responsibility, and is reviewable by petition.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Press 4,393,923, (Figures 6 + 7)

In Figs. 6 and 7, Press '923 discloses an upper film 14 and lower film 16 bonded together at outer edges 62 to form a panel. Spot seals 60 bond the upper and lower films together at intermediate locations throughout the panel as seen in Figs 6 and 7. An inlet 24 is shown in Figure 6 (at the top) and a corresponding outlet (shown in Figure 1) 26 is at the opposite end of Figure 6 (which appears to be only a partial showing of the entire device).

Claim 2 is disclosed in Figure 7 wherein the areas between spot seals 60 are deemed "chamber like cavities or interspaces."

Regarding claim 3, as shown in Figure 6, the area between inlet 24 and top row of heat seals 60 is open to form a "single coherent chamber system." Likewise, it would be understood, there would be a corresponding open area in the vicinity of outlet 26 (not shown in Figure 6, but clearly visible in Figure 1).

Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Press 4,036,209.

Press '209 is discussed extensively in the aforementioned Press '923. It explicitly discloses, in regard to Figs 1 and 2, polymeric film (col. 3, lines 3-4) and more specifically polyethylene film (col. 4, lines 26-27), 5-10 mils thick.

Claims 1, 2, 3 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tousignant et al 5,205,348 (Figs 4-6).

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Figs 4-6 show a central connection 112 dividing the chamber into two parallel chamber-like cavities or interspaces. Inlets and outlets 108 and 110 are shown. The films 102 and 104 are disclosed in col. 8, lines 47-50 and col. 6, lines 19-23 to be polypropylene.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

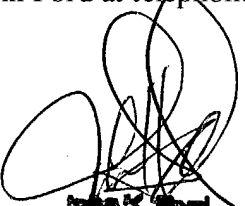
Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Giddings USP 4,585,523, Figure 9.

Inlets and outlets are shown at the top and bottom of plastic film materials (col. 7, lines 12-14). Vertical seams 60 divide the flow space into eight parallel flow sub-spaces.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of the prior art as applied to claim 8 above, and further in view of Dodds 4,842,049 or Ansley 6,295,818.

Dodds explicitly teaches cross-linked polyethylene materials in the paragraph spanning cols. 6-7 as does Ansley in col. 3, line 14. To have used these in the prior art films to increase the strength of the heat exchanger film would have been obvious.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.



**John K. Ford**  
Primary Examiner